



EX PARTE OR LATE FILED

March 8, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW., Room TW-B204  
Washington, D.C. 20554

RECEIVED  
MAR 8 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation,  
CC Docket No. 98-141  
CC Docket No. 98-184/

Dear Ms. Salas:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's rules, you are hereby notified on behalf of NEXTLINK Communications, Inc. that on March 5, 1999, Cathy Massey, Assistant General Counsel of NEXTLINK Communications, Inc., Brian Rankin, Vice President of Legal and Regulatory Affairs for NEXTLINK Illinois and the undersigned met with Donald Stockdale, Claire Blue, Bill Dever, Jennifer Fabian, Michael Kende, Johanna Mikes, and To-Quyen Truong of the Common Carrier Bureau, and Patrick DeGraba, Johnson Garrett, Evan Kwerel, and Marilyn Simon of the Office of Plans and Policy.

The purpose of the meeting was to discuss NEXTLINK's position on the pending merger applications at the Commission. At the meeting, NEXTLINK representatives stated their opposition to the proposed SBC Communications Inc./Ameritech Corp. merger and the proposed Bell Atlantic/GTE Corporation merger.

The attached document summarizing NEXTLINK's position on these mergers was provided at the meeting.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Gonzalez".

Daniel Gonzalez  
Director, Regulatory Affairs

1730 Rhode Island Avenue, N.W.

Suite 1000

Washington, D.C. 20036

202.721.0999

fax: 202.721.0995



Attachment

cc: Donald Stockdale, Common Carrier Bureau  
Clare Blue, Policy and Program Planning Division  
Bill Dever, Policy and Program Planning Division  
Jennifer Fabian, Policy and Program Planning Division  
Michael Fende, Policy and Program Planning Division  
Johanna Mikes, Policy and Program Planning Division  
To-Quyen Truong, Policy and Program Planning Division  
Patrick DeGraba, Office of Plans and Policy  
Johnson Garrett, Office of Plans and Policy  
Evan Kwerel, Office of Plans and Policy  
Marilyn Simon, Office of Plans and Policy

# NEXTLINK Communications, Inc.

03/05/99 Presentation re: Proposed  
Ameritech/SBC Merger  
and Proposed Bell Atlantic/GTE  
Merger

# The merging parties' claims of the mergers' pro-competitive benefits are illusory

- SBC/Ameritech's and Bell Atlantic/GTE's argument that they need the increased scope and scale of a combined company to compete in markets outside their territories is not supported by the facts:
  - Ameritech's plans to enter SBC's markets in Missouri and California and Texas show that these companies already have the ability and the wherewithal to compete with each other;
  - SBC/Ameritech and Bell Atlantic/GTE have failed to enter any local out-of-region markets, regardless of geographic proximity and size;
  - The presence of small CLECs such as NEXTLINK show that large size is not a prerequisite to market entry.

- If barriers to entry are high, it is due to the efforts of the incumbents to exclude competition from new entrants:
  - None of the RBOCs has meet the Act's 14 point competitive checklist;
  - NEXTLINK's experience as new entrant in each of the RBOC regions and in GTEs markets has been marred by:
    - Inadequate ordering, provisioning and maintenance;
    - Lengthy and expensive attempts to obtain collocation, the only means available to obtain access to unbundled loops; and
    - Misuse of processes such as the conversion from INP to LNP; the bona fide request process and interconnection negotiations to create expensive and time-consuming roadblocks to entry
  - GTE's treatment of new entrants is an example of what can be expected if Section 271 incentives are eliminated.

- It is unclear where the combined companies will eliminate “duplicative” costs to achieve the economies of scale that SBC/Ameritech and Bell Atlantic/GTE claim is a benefit of the mergers;
  - combined operations may result in less innovation in the development and deployment of advanced services;
  - combined operations will not cure and may exacerbate the companies’ failure to be “competition ready”
    - NEXTLINK has first-hand experience with each of the RBOCs’ failure to deploy sufficient personnel and resources to meet the needs of new entrants to their markets

- The combined entities may represent the lowest common denominator of each company;
  - NEXTLINK fears that the combined companies will eliminate the handful of favorable distinctions among the RBOCs regarding each company's treatment of new entrants;
  - The California Ratepayer Advocate reported that the effect of SBC's acquisition of Pactel was higher prices, worse service and less competition; and
  - NEXTLINK's own experience in CA and NY shows that consumers and new entrants were better off before mergers in those regions.

NEXTLINK's experience in NY and PA shows that even a carefully-crafted consent decree may be insufficient to curb anti-competitive conduct

- Once the BA/NYNEX merger was consummated, the company quickly began to disavow or distort the pro-competitive safeguards it had voluntarily adopted;
  - BA/NYNEX backtracked from its commitment to produce performance monitoring reports that are essential in identifying discrimination in the provision of interconnection, UNEs, and resale service;
    - BA/NYNEX refused to report transactions it claimed were “statistically insignificant” because they did not meet a certain reporting threshold (e.g., <1000 loop orders per month);
    - BA/NYNEX attempted to report performance on an aggregated basis, in an effort to mask its treatment of individual CLECs;



- BA/NYNEX is currently not held accountable for service provisioned below the statutory “parity” standard because existing performance reports essentially permit BA/NYNEX to offset “bad” performance with “good” performance in another service area.
- BA/NYNEX has successfully sidestepped its duty to negotiate into interconnect agreements enforcement mechanisms that ensure compliance with each performance standard.
  - BA/NYNEX has consistently refused to negotiate the inclusion of incident-based liquidated damage enforcement provisions into its interconnection agreements.
  - Instead, BA/NYNEX designed an elaborate system of performance credits that provide CLECs with rebates on recurring and/or non-recurring charges associated with the particular service provisioned below the “parity standard.”

- Performance Credits that rebate only 5 or 10% of a service charge are woefully inadequate and provide no incentive for an RBOC to provide non-discriminatory service.
- BA/NYNEX refused to extend additional safeguards it had voluntarily agreed to in NY to other parts of its region.
- BA/NYNEX does not take its Performance Monitoring Reporting Requirements seriously and has difficulty complying with the FCC's Requirements. FCC has admonished BA/NYNEX and stated its "concern" regarding numerous inaccuracies, mislabeling, and reporting errors contained in the last 3 BA/NYNEX submissions.